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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1428

SADIE GOLDBAUM,

Petitioner,

vs.

THE UNITED STATES OF AMERICA AND HARRY H. STRAUSS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

MANLY FLEISCHMANN,
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ADELBERT FLEISCHMANN,
DWIGHT CAMPBELL, JR.,
JOSEPH P. BURKE,
Of Counsel.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Summary of the matter involved	1
The questions presented	5
Basis of this Court's jurisdiction to review the judgment and the reasons relied upon for the allowance of the writ	6
Brief in support of petition	9

Table of Cases Cited

Baldwin v. *United States*, 68 Fed. Supp. 657	7, 12
Dayton Airplane Co. v. *United States*, 21 F. 2d 673	15
DeBrauwere v. *DeBrauwere*, 203 N. Y. 460	12
Horseman v. *United States*, 68 Fed. Supp. 522	7, 12
Maldonado v. *United States*, 69 Fed. Supp. 302	7, 13
McClure v. *United States*, 95 F. 2d 744	11
Niewiadomski v. *United States*, 159 F. 2d 683	6, 10
Smith v. *United States*, 69 Fed. Supp. 387	7, 12
Zazove v. *United States*, 156 F. 2d 24	6, 9

Statute Cited

National Service Life Insurance Act of 1940, as amended, Title 38 U. S. C. A. 802-G, 801-F	2

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Sadie Goldbaum respectfully shows:

I

Summary of the Matter Involved

Petitioner seeks a review by this Court of a judgment of the United States Circuit Court of Appeals for the Second Circuit entered April 8th, 1947, affirming a judgment

of the United States District Court for the Western District of New York in favor of the plaintiff.

This action was commenced by the father of Morris Strauss who died while on active duty with the United States Navy, to recover the proceeds of a National Service Life Insurance policy which had been issued upon the life of the decedent in the amount of $10,000.00. The sailor had named as the beneficiary of the policy the petitioner, Sadie Goldbaum, describing her as a person who stood *in loco parentis* to him (Defendant's Exhibit A, Fol. 377). Shortly after the death of the assured, the petitioner, as named beneficiary, made application through the Veterans Administration for payment of the proceeds of the policy. This agency investigated the application, and determined that Mrs. Goldbaum was a proper person to be named as beneficiary, finding that she had in fact stood *in loco parentis* to the assured during his lifetime. Accordingly, the Veterans Administration held that she was entitled to the proceeds of the policy in accordance with the assured's expressed desire and intention. (Complaint, Paragraph 8, Fol. 8; Answer of the defendant United States of America, Paragraph V, Fol. 18; Answer of defendant Sadie Goldbaum, Fol. 25.)

Thereafter, Harry R. Strauss, the natural father of the assured, commenced this action claiming that Sadie Goldbaum had never stood *in loco parentis* to his son, and therefore was not a person who could be named as a beneficiary of the policy under the National Service Life Insurance Act of 1940, as amended (Title 38 U. S. C. A., Secs. 802-G, 801-F). This statute lists the classes of permitted beneficiaries, including one who stands *in loco parentis*, but does not otherwise define the latter term.

The case was tried before Judge Harold P. Burke of the United States District Court for the Western District of New York without a jury. The United States appeared at

the trial but took no active part in it (Fols. 31-36). The Trial Court adopted a strict common law definition of the term *in loco parentis,* found that Mrs. Goldbaum did not come within that definition, and gave judgment for the plaintiff father (District Court Decision, P. 142 *et seq.*) although the insured sailor who paid the premiums had never intended to benefit him.

Petitioner appealed to the United States Circuit Court of Appeals for the Second Circuit where the judgment of the Trial Court was unanimously affirmed with an opinion by Frank, J. (R. 157-8). The United States took no part in the proceedings on appeal.

Facts

The basic facts upon which the decision of the Trial Court and the affirmance by the Circuit Court of Appeals rest are really undisputed. Morris Strauss' mother died in 1933 when he was only eight years old (Fols. 83, 374). His father, the plaintiff in this action, was unable financially or physically to care for his two children. The daughter was formally adopted by another family (Fols. 98, 99), and Morris in 1934 was placed by the Jewish Welfare Society in the home of Sadie Goldbaum and her husband (Fol. 46). The Goldbaums received from the Welfare Agency $6.00 a week for the child's board, together with occasional additional money for clothing and spending money for the boy, as well as free medical and dental treatment (Fols. 46, 50, 52). Morris lived with the Goldbaum family under this arrangement from the time he was nine years old until six months before he enlisted in the Navy at the age of seventeen (Fol. 232-3).

The contributions from the Jewish Welfare were, of course, not sufficient to pay for every need of the boy, and Mrs. Goldbaum estimated that the additional expense to her and her husband in keeping him was $100.00 per year

(Fol. 364). In addition, she did all the other things which any mother would do for her own children, and he was treated in all respects as a member of the Goldbaum family. During the years, strong bonds of affection developed between the boy and other members of the Goldbaum family. He called the petitioner "Mother" and "Mom", and he referred to the Goldbaum children as his brother and sister (Fols. 63, 79, 117, 183, 184, 189, 200, 201, 207, 212, 405, 408, 412, 423). Mrs. Goldbaum took care of him when he was sick and even took him on trips to the Adirondacks on two occasions so that he could recuperate properly from illnesses (Fol. 223-4). When Morris was confirmed in the Jewish Faith, the Goldbaums undertook all the arrangements attendant on this ceremony, just as if he had been their natural son. These included a party where food and drink are furnished in large quantities by the parents and family of the boy or girl concerned (Fols. 185-6, 226-7). It was agreed by all of the witnesses from the neighborhood where the Goldbaums lived that Morris was regarded as a regular member of the family by himself, by the Goldbaums and by the community (Testimony of Mary Seel, P. 61 *et seq.*, Henry Hannel, P. 65 *et seq.* Evelyn Bush, P. 68 *et seq.*)

It is undisputed that during all of this time Morris also remained on the best of terms with his father; indeed, Mrs. Goldbaum testified that she had "brought him up to honor his father." (Fols. 227, 285; plaintiff's Exhibits 3, 4, 5, 6, 11, 12, 13).

The contributions from the Jewish Welfare Society were increased in the fall of 1941 along with the increased cost of living, first to $6.50 per week, and later to $7.00 per week; one of these increases was at the request of the petitioner. In June, 1942, all contributions were stopped, since Morris was then seventeen years old, had completed as much education as he intended to get and had gone to work

as a drug store clerk (Fols. 64-5). He continued, however, of his own choice to live with the Goldbaums until he entered the service in December, 1942. Thereafter, he continued to treat their home as his own when on furlough, having his own room as he always had had (Fol. 229). He died on November 11, 1943.

Upon these facts, the Courts below have held that Sadie Goldbaum did not stand *in loco parentis* to Morris Strauss. This decision in both courts is based solely upon her failure to bring herself within the strict common law definition of this phrase in one respect only. It is said that one who stands *in loco parentis* must undertake the parental obligation to provide for the support and maintenance of the child; that in this case this obligation did not exist, or at least was not complete, because of the contributions from a charitable organization. Upon this narrow, legalistic ground, the Court disregarded the expressed wishes of the deceased sailor, and his own statement of the relationship, ignored the determination of the Veterans Administration, the agency charged with the administration of these matters, and directed that the proceeds of the insurance policy be paid in a manner entirely different from that provided in the contract and intended by the man who paid the premiums and thus created the fund.

II

The Questions Presented

The questions presented for the determination of this Court are these:

1. Are the provisions and definitions of the National Service Life Insurance Act of 1940, as amended, Title 38 U.S.C.A., to be interpreted in accordance with strict common law principles or in the light of their ordinary meaning

as understood by the persons for whose benefit the legislation was enacted?

2. Does the common law or statutory concept of *in loco parentis* necessarily include as an indispensable element, assumption of an obligation for sole and exclusive support of the infant by both foster parents?

3. What weight should be given to the administrative practice and determinations of the Veterans Administration in the administration of the Act?

4. May the United States make a contract of insurance with a member of the armed services, agree with him that a designated person is within the permitted class of beneficiaries, accept premiums which are paid on the expectation that the intended beneficiary will receive the proceeds, and then, after the death of the assured, make payment of the proceeds to a person other than the one agreed upon as the beneficiary?

III

The Basis for This Court's Jurisdiction to Review the Judgment and the Reasons Relied upon for the Allowance of the Writ.

1. The Circuit Court of Appeals for the Second Circuit has rendered a decision in this case which conflicts with the decision of the Circuit Court of Appeals for the Seventh Circuit in a case involving exactly the same principles of law.

Zazove v. *United States,* 156 Fed. 2nd 24.

Illustrative of this conflict is the decision of the Circuit Court of Appeals for the Sixth Circuit in *Niewiadomski* v. *United States,* 159 Fed. 2nd 683, Petition for Writ of Certiorari No. 1243 filed April 14, 1947.

This conflict has been further reflected in the decisions of District Courts in various Circuits.

Horseman v. *United States,* 68 Fed. Supp. 522 (U. S. District Court, Western District of Mo., July 27, 1946);

Baldwin v. *United States,* 68 Fed. Supp. 657 (U. S. District Court for the Western District of Mo., St. Joseph Division);

Smith v. *United States,* 69 Fed. Supp. 387 (U. S. District Court, District of R. I., Dec. 31, 1946);

Maldonado v. *United States,* 69 Fed. Supp. 302 (U. S. District Court, Eastern District of New York, Dec. 24, 1946).

2. The interpretation and administration of the National Service Life Insurance Act of 1940, as amended, Title 38 U.S.C.A. presents an important and substantial federal question which has not been, but should be settled by this Court.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari issue to review the decision of the Circuit Court of Appeals in this action.

SADIE GOLDBAUM,
Petitioner.

MANLY FLEISCHMANN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1428

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THE UNITED STATES OF AMERICA AND HARRY R. STRAUSS

BRIEF IN SUPPORT OF PETITION

The statement and summary of the matter involved contained in the petition includes a statement of facts sufficient for the purposes of this brief.

Review by this Court is sought on two grounds. First, that the Circuit Court of Appeals for the Second Circuit has rendered a decision in this case which conflicts with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Zazove* v. *United States,* 156 Fed. 2nd 24. Second, the interpretation and administration of the National Service Life Insurance Act of 1940, as amended, Title 38 U. S. C. A. presents an important and substantial federal question which has not been, but should be, settled by this Court.

The conflict between the Circuit Courts and the importance of the question involved in this case is emphasized

by the fact that there is now pending before this Court a petition for Writ of Certioriari to the Circuit Court of Appeals for the Sixth Circuit in No. 1243, *Niewiadomski* v. *United States,* 159 Fed. 2nd 683, filed April 14, 1947. In that case the decision was also in conflict with the principles laid down in the *Zazove* case, *supra.* While the factual situation presented in the *Niewiadomski* case, *supra* is entirely different from that in the case at bar, consideration of these two petitions together will demonstrate the necessity for a general review by this Court of the principles of law involved.

Point I

The Conflict Between the Circuit Courts Requires a Review by This Court

The *Zazove* case, *supra,* involved a soldier who, when he was twenty-five years old in 1937, went to live with a woman some forty-eight years old whom he called "aunt", but who was not in fact related to him. He lived with her until he enlisted early in 1941. In his application for a policy of National Service Life Insurance, the soldier designated her as beneficiary. The woman sued to recover the proceeds of the policy upon the soldier's death, asserting that she stood *in loco parentis* for more than one year before the effective date of the policy. The District Court held that since the soldier was of full age during the entire time of his residence with the plaintiff, such a relationship could not exist.

The Circuit Court of Appeals for the Seventh Circuit reversed this judgment and directed that judgment be entered for the plaintiff. In a well considered opinion, the Court decided that it was not necessary for the foster child to be a minor in order to support the relationship of *in loco parentis.* It called attention to the fact that the

statute involved, like the similar statutes enacted during and immediately after World War I, was "a remedial one and should be liberally construed in favor of the insured and to carry out his intentions", citing *McClure* v. *United States*, 95 Fed. 2nd 744 (9th Circuit). In considering the true meaning of *in loco parentis*, the Court said: "We think they were used as descriptive words and were not to be restricted to 'stick in the bark' legal connotations usually attached to common law."

The case at bar presents a situation identical in principle. Here, the assured was an infant, but since substantial contributions for his support came from a source other than the foster parent, the obligation on her part to furnish him with necessaries was reduced to a minimum. The lower courts took the view that the exclusive obligation for support was an indispensable element to create the relationship *in loco parentis*. In the *Zazove* case, *supra*, no support whatsoever was either given or required due to the age of the insured, yet the Court had no difficulty in eliminating this requirement in order to carry out the wishes of the deceased soldier. In considering this phase of the case the Court said:

> "One standing in the place of a parent may give more than material things to that relationship. Not only material help may flow from such a relationship. Some of the most worth-while, precious and cherished things in one's life may come therefrom wholly separate and apart from the rights of support and maintenance. In our opinion if the person named as beneficiary stands in fact in the relation of a parent toward the insured, yielding whatsoever there is of substance or sentiment to the relationship, the fact that the person who is the recipient of the fruits of such relationship is an adult is immaterial."

In *Horseman* v. *United States*, 68 Fed. Supp. 522, the same result was reached with respect to an adult foster child.

The following District Court cases also support the more liberal rule enunciated in the *Zazove* case:

Baldwin v. *United States*, 68 Fed. Supp. 657;
Smith v. *United States*, 69 Fed. Supp. 387.

The case to be reviewed, moreover, involves a situation peculiarly favorable to the named beneficiary and not discussed in any of the cited cases, in that the person named as beneficiary was one whom the assured regarded as his foster *mother*. By insisting upon the requirement that this woman be shown to have undertaken and carried out the exclusive obligation to support the infant, the courts below imposed upon her a greater duty than would have been imposed upon a natural mother. It is settled beyond dispute in New York that the primary obligation to support minor children rests on the father. *DeBrauwere* v. *DeBrauwere*, 203 N. Y. 460. With the natural father still living, as he was in this case, it is difficult to see how any financial obligation toward the child could be required of the foster mother, even under the strictest common law rule.

The conflict between the Circuits on the question of statutory interpretation is well defined. In the opinion of the Circuit Court in the instant case, Judge Frank stated his concept of the law as follows:

> "However, the parent of a minor generally is responsible for the support of the child, and we believe that such responsibility is necessary to establish the relationship of one *in loco parentis*."

It is thus clear that the Circuit Court for the Second Circuit feels that a strict construction of the statute is necessary to carry out the legislative intent. This infer-

ence is buttressed by a District Court decision in the same circuit. In *Maldonado* v. *United States,* 69 Fed. Supp. 302 (District Court, Eastern District of N. Y.), the Court in denying a motion for summary judgment, held that the words *in loco parentis* should be given their narrow, common law meaning in all respects. The Court expressly repudiated the *Zazove* decision and said:

> "The expression 'in loco parentis' could not have been chosen at random by Congress to mean that nearly any person, not eligible to be named as a beneficiary in this type of insurance, could be rendered so by merely affixing that label to his or her name. I should suppose that the choice of words was deliberate, not casual, and that the intention was to describe a status which, through the years, had come to be understood as possessing well recognized characteristics."

As against these views, the Court in the *Zazove* case follows the familiar rule that the National Service Life Insurance Act, being a remedial statute, should be liberally construed so as to provide the maximum benefit for those in military service whom Congress sought to aid. In discussing the Congressional intent, the Court said:

> "That Congress never intended such a narrow, legalistic construction of its words is evidenced by the fact that on June 3, 1946, the House of Representatives passed without a dissenting voice a liberalizing amendment to the National Life Insurance Act, which made certain that the class of beneficiaries included step parents, thereby expressing its disapproval of the narrow construction given by the Veterans' Administration to the words *in loco parentis.* Instead of Congress adopting the strict construction of the department, it has, as far as the House of Representatives is concerned, unanimously rejected the department's construction. We too reject it as of no assistance in reachin a proper construction."

It may be observed in passing that the Veterans Administration determined that Mrs. Goldbaum's status was *in loco parentis* even under the "strict construction" rule which that department followed.

It is submitted, however, that the liberal construction adopted by the Seventh Circuit Court of Appeals is the proper one, and that the whole subject is in urgent need of clarification by this Court.

Point II

The Questions Presented in the Petition Are of the Utmost Importance in the Administration of the National Service Life Insurance Act of 1940.

It may confidently be predicted that the conflict that has already developed in the Circuit Courts in determining Congressional intent in using the term *in loco parentis* will be intensified in coming years. It may be assumed that there are millions of policyholders at the present time, practically all of whom are in a relatively low age bracket. As the policies mature during the next fifty years, a flood of litigation on this and similar questions must be anticipated. A definitive ruling on the questions presented in the petition must be a first step in dealing with the problem. Indeed, the problem itself will grow more serious with the years. Many injustices will be done if a named beneficiary is required to make proof of every technical requirement to support his position as a foster parent many years after the relationship relied upon has ceased, and available witnesses have disappeared.

In this connection, the weight to be given to administrative determinations by the Veterans Administration, should be given serious consideration. In the case at bar, apparently no weight was given the findings of this agency al-

though its officials decided that this defendant came within the requirements of the Act.

While sections 445 and 817 of Title 38 permit suit in case of "disagreement as to any claim arising under this chapter," it does not follow that no weight is to be given to the determination of the Veterans Administration in the same case. Indeed, another section (808) supports the inference that such a suit is in effect a "review" of the Administration's decision. In view of the settled policy of this Court with respect to the effect of administrative determinations, it is submitted that the practice followed by the courts below in the present case should be reviewed on this point.

Finally, the question involving the rights and duties of the United States as a contracting party is one which requires the attention of this Court. In the *Niewiadomski* case, *supra,* it is said that the United States is not and cannot be estopped in any manner whatsoever by the acts of its officers and agents in accepting premiums, where the Courts decide that the person named in the policy as beneficiary is, by legal construction, not a proper person under the terms of the Act. But, where both contracting parties at the inception of the contract agree that the person named as beneficiary is a proper one, should not the ordinary rules of law apply to both parties? Thus, in the absence of fraud or mistake, the intention of the parties should govern and both parties should be bound by the instrument which expresses this intention. When the United States becomes a party to an ordinary commercial contract, it is submitted that it may properly be held to the usual rules of fair dealing which govern such contracts when made by individuals.

cf. *Dayton Airplane Co.* v. *United States,* 21 Fed. 2nd 673. (CCA 6th Circuit) and cases cited at P. 674.

LAST POINT

It is respectfully submitted that the petition be granted, and that a writ of certiorari be issued to the Circuit Court of Appeals for the Second Circuit.

Respectfully submitted,

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